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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209914
Party	Defendant VENTURI SPIRITS, LLC
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Date	06/06/2013
Attachments	Response to Motion for Default.pdf(91767 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of

Application No. : 85693721
Applicant : Venturi Spirits, LLC
Mark : Old Pepper Bourbon
Filing Date : March 25, 2013
Publication Date : January 22, 2013
Opposed Class : 33

GEORGETOWN TRADING CO. LLC

Opposer,

v.

VENTURI SPIRITS, LLC.,

Applicant.

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Opposition No. 91209914

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APPLICANT’S RESPONSE TO OPPOSER’S MOTION FOR DEFAULT JUDGMENT

Applicant, Venturi Spirits, LLC , by and through their undersigned counsel and files this, its Response to Opposer’s Motion for Default Final Judgment, and does state:

1. On May 23, 2013, the Applicant filed their Answer and Affirmative Defenses which raise significant issues of fact and law in response to the Opposition. The Answer was filed less than two weeks after its due date based upon a miscalendaring.
2. On May 31, 2013, subsequent to the filing of the Answer and Affirmative Defenses, the Applicant has filed a spurious and baseless Motion for Default Judgment.
3. Pursuant to 37 C.F.R. 2.116(a), the procedure and practice between litigants in the United States Patent and Trademark Office shall be governed by the Federal Rules of Civil Procedure. Under the applicable Rules of Civil Procedure, a Motion for Default Judgment would be inappropriate and premature, as an entry of default has not been issued pursuant to Federal Rule of Civil Procedure 55(a).
4. Moreover, Default Judgments are inappropriate where pleadings are filed prior to the

filing of the Default Judgment Motion. *See Fisher v. Office of the State Attorney 13th Judicial Circuit, Florida*, 162 Fed. Appx. 937 (11th Cir. 2006); *see also Lewis v. Wilcox*, 2006 U.S. Dist. LEXIS 89680 (11th Cir. 2006). Here, the Motion for Default Judgment was filed subsequent to the Applicant's Answer and Affirmative Defenses.

5. Moreover, as stated by numerous courts, “[t]he decision to enter a default judgment is...a drastic remedy which should be used only in extreme situations...the usual preference are that cases be heard on the merits rather than resorting to sanctions that deprive a litigant of his day in court.” *See e.g. Wahl v. McIver*, 773 F.2d 1169 (11th Cir. 1985)

6. Here, the Opposer incorrectly muddies the argument by improperly raising issues which occurred prior to the filing of the opposition, including settlement discussions, or matters which have allegedly occurred during litigation. These matters are irrelevant to the Motion. What *is* relevant, however, are that the cases cited by the Opposer do not reference a situation where the Answer has been filed prior to the Default being entered, as is the case herein. As cited by the relevant case law, that is because such a default would be improper under the circumstances. *Id.*

7. As the Applicant has raised issues of both fact and law, the matter should be allowed to proceed on its merits.

WHEREFORE, Applicant prays that the Applicant's Motion for Default Judgment be

denied, and Applicant's registration be granted.

Respectfully submitted,

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Kraig S. Weiss, Esq.
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CERTIFICATE OF FILING

I HEREBY CERTIFY that this is being submitted electronically to the Trademark Trial and Appeal Board at the United States Patent and Trademark Office on this 6th day of June, 2013.

By: /s/kraig s. weiss

Kraig S. Weiss, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this pleading is being served via United States mail, postage prepaid, to the following, on this 6th day of June, 2013:

Andrew Spivak, Esq.
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By: /s/kraig s. weiss

Kraig S. Weiss, Esq.